

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, September 15, 2004, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Eugene Carroll, Gerry Krieser, Roger Larson, Dan Marvin, Mary Bills-Strand, Lynn Sunderman and Tommy Taylor (Melinda Pearson absent). Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Ed Zimmer, Brian Will, Becky Horner, Tom Cajka, Greg Czaplewski, Derek Miller, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held September 1, 2004. Motion for approval made by Marvin, seconded by Carroll and carried 6-0: Carroll, Larson, Krieser, Marvin, Bills-Strand and Sunderman voting 'yes'; Carlson, Pearson and Taylor absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

September 15, 2004

Members present: Carlson, Carroll, Krieser, Larson, Marvin, Bills-Strand and Sunderman; Taylor and Pearson absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 04045; MISCELLANEOUS NO. 04009; SPECIAL PERMIT NO. 04045; COUNTY SPECIAL PERMIT NO. 04046, MUSTANG RIDGE COMMUNITY UNIT PLAN; COUNTY PRELIMINARY PLAT NO. 04020, MUSTANG RIDGE; COMPREHENSIVE PLAN CONFORMANCE NO. 04005; and COMPREHENSIVE PLAN CONFORMANCE NO. 04006.**

Item No. 1.1b, Miscellaneous No. 04009, Item No. 1.3a, County Special Permit No. 04046 and Item No. 1.3b, County Preliminary Plat No. 04020, were removed from the Consent Agenda and had separate public hearing.

Ex Parte Communications: Marvin reported a phone call from Bob Norris encouraging the approval of Change of Zone No. 04045.

Marvin moved to approve the remaining Consent Agenda, seconded by Krieser and carried 7-0: Carlson, Carroll, Krieser, Larson, Marvin, Bills-Strand and Sunderman voting 'yes'; Taylor and Pearson absent.

Note: This is final action on Special Permit No. 04045, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

COUNTY SPECIAL PERMIT NO. 04046,
MUSTANG RIDGE COMMUNITY UNIT PLAN
and
COUNTY PRELIMINARY PLAT NO. 04020,
MUSTANG RIDGE,
ON PROPERTY GENERALLY LOCATED
AT N.W. 27TH STREET AND W. AGNEW ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 15, 2004

Members present: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman and Bills-Strand; Taylor and Pearson absent.

Staff recommendation: Conditional Approval.

Ex Parte Communications: None

These applications were removed from the Consent Agenda and had separate public hearing.

Mike DeKalb of Planning staff submitted two e-mails in opposition from Richard H. Benes and Randy Benes, with concerns about taxes, groundwater, and the rising cost of farmland driven by acreage development.

Proponents

1. Brian Carstens appeared on behalf of **Bob Benes of Aspen Builders**. This is an AG community unit plan, located immediately south of Raymond Central High School, consisting of four acreage lots, with individual well and septic systems and private gravel roadway for access.

With regard to the concern about water, Carstens referred to the groundwater report which indicates adequate potable water, although most homeowners will opt to use water softeners for household purposes.

Carstens pointed out that the applicant could develop four 20-acre lots by right.

There was no testimony in opposition.

COUNTY SPECIAL PERMIT NO. 04046

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 15, 2004

Larson moved to approve the staff recommendation of conditional approval, seconded by Krieser and carried 7-0: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman and Bills-Strand voting 'yes'; Taylor abstaining, having arrived during the public hearing; Pearson absent. This is a recommendation to the County Board.

COUNTY PRELIMINARY PLAT NO. 04020

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 15, 2004

Krieser moved to approve the staff recommendation of conditional approval, seconded by Carlson and carried 7-0: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman and Bills-Strand voting 'yes'; Taylor abstaining, having arrived during the public hearing; Pearson absent. This is a recommendation to the County Board.

MISCELLANEOUS NO. 04009

TO AMEND THE CITY OF LINCOLN

DESIGN STANDARDS RELATING TO

COMMUNITY UNIT PLANS.

PUBLIC HEARING BEFORE PLANNING COMMISSION: September 15, 2004

Members present: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand; Pearson absent.

Staff recommendation: Approval.

Ex Parte Communications: None

This application was removed from the Consent Agenda and had separate public hearing at the request of Commissioner Bills-Strand.

Proponents

1. Becky Horner of Planning staff explained that the purpose of the proposed amendments are to simplify the development process. Specifically, the revisions to the design standards for community unit plans include eliminating one of the methods for calculating density so that all will be calculated in the same way. The revisions update the cluster density for apartments with what has been occurring over the last 15 years. There will no longer be the need to ask for the waiver to do the cluster density. The design standards

for Planned Unit Development Corporate Office Parks are no longer outlined in the PUD ordinance, so that section is being removed entirely.

Bills-Strand inquired as to how many CUP applications do not request setback waivers. Isn't the reason for the CUP to get some waivers? Horner explained that often the reason for the CUP application is to allow private roadways with no setback waivers.

Bills-Strand referred to the elimination of floodplain language. Is this an attempt to set a policy regarding development in the floodplain where we have not seen the committee's work for inside the city limits? Rick Peo of the Law Department explained that the language being deleted dealt with location of utilities which was superseded when the first floodplain regulations for the city were adopted and was therefore obsolete language.

Bills-Strand observed that cluster density is increasing, yet when applied in existing neighborhoods, the neighbors are against the additional density so the Commission and City Council deny it. She is struggling with not enforcing the cluster density. Horner explained that staff discussed increasing the maximum allowable density but was not able to resolve how to do that at this time. Therefore, it is not part of this package. The cluster density amendment just applies to apartments and apartment buildings. This proposal updates that cluster density but it does not affect the overall maximum density.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 15, 2004

Sunderman moved approval, seconded by Krieser and carried 8-0: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Pearson absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 04044,
MISCELLANEOUS NO. 04008
and
MISCELLANEOUS NO. 04011,
TEXT AMENDMENTS TO THE ZONING
ORDINANCE, SUBDIVISION ORDINANCE
AND CITY OF LINCOLN DESIGN STANDARDS
ADOPTING "BUILD-THROUGH ACREAGE" STANDARDS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 15, 2004

Members present: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand; Pearson absent.

Staff recommendation: Approval.

Ex Parte Communications: None

Proponents

1. **Mike DeKalb** of Planning staff presented the proposal for “build-through” acreage standards as called for in the Comprehensive Plan. The consultant’s final report came out in March 2004 and is available on the Web site. The Planning Department formed the “Acreage Resource Group” to assist with three of the acreage studies, which included, among others, the County Engineer, Public Works & Utilities, land use attorneys, engineers, farmers, residents of acreages close to the City that had been annexed; and real estate developers. These individuals were invaluable in assisting the staff.

The Planning Department held briefings for the City-County Common in late 2003 and early 2004; did some coordination with other city departments; and held a number of public information meetings and open houses.

The proposed amendments to Title 27 establish the “build-through” overlay district, which applies to AG and AGR zoning within the 3-mile city jurisdiction. The district provides for a “shadow plat” for future smaller lots; provides for easements for existing and future lots; provides and requires pre-grading of the streets and drainage areas; includes the requirement for agreements for no protest to future annexation and assessments; includes future utility easements; the current bonus package is modified to allow 20% for preservation of future development land and an additional 20% for community sewer to cluster down to smaller lots.

The proposed amendments to Title 26 reflect the “shadow plat”, with calculation of the grading and drainage and rough grading must be in place.

The proposed amendments to the Design Standards amend the rural public street design standards, requiring concrete paving if paved and revises the typical cross-section of the street. A public street can be gravel or concrete paving; there is still the option of asphalt paving for private streets in community unit plans.

Marvin confirmed that these amendments will go on to the City Council and they apply out to Tier III. DeKalb clarified that the proposed amendments apply to the city 3-mile jurisdiction.

Marvin noted that there are some AG to AGR requests sitting on the Planning Commission’s pending list. How do we treat those? DeKalb explained that for changes of zone to AGR, the approach had been the point system as opposed to build-through. The point system is being evaluated by the County Board at this time. There are also items on the pending list that mention the build-through and this gives the opportunity for those developers to address build-through in their applications. Those applications submitted after adoption of the build-through would be held to the new standard. If an AGR area comes in with a plat, these design standards would apply.

Larson inquired as to the meaning of “rural local street”. DeKalb stated that the basic cross-section drawing actually reduces the crown of the road, so that when the concrete is put in place, the curb and gutter can be put in and it becomes a city cross-section.

Bills-Strand expressed concerns about the requirement for “rough” grading and “pre-grading” of all streets and drainageways. DeKalb explained that if the street is shown on the plat and the city gets an easement and it is pre-graded, it is hoped that the developer would not put structures on that street. The intent is that they can use it as part of their open space, but if there is some cut, you get the rough cut in place so that the fence lines aren’t in the wrong place and so that a big tree is not put in the right-of-way. Bills-Strand inquired when it is assumed we will be out to Tier III. DeKalb stated that Tier I is considered to be 25 years, Tier II 25-50 and Tier III is beyond 50. Bills-Strand believes the overall concept is wonderful, but it is the grading issue that concerns her. If we are going to make the developer grade the street, she believes they should be able to enjoy and utilize the acreage the way they want. DeKalb explained that the Acreage Recourse Group and the staff were trying to find a balance utilizing the full three to four to five acres and provide protections for the future, the point being that the Comprehensive Plan not only calls for development of build-through, but we will get there someday. This preserves that road right-of-way for the future.

DeKalb believes that the more likely scenario after adding the second 20% bonus is that we will see clustering with smaller lots with a community system or an AG area with 3-acre lots clustered together. The open lot set aside minimizes the grading. We’re trying to find a balance.

With regard to Tier II and Tier III, Bills-Strand inquired as to how our road standards have changed in the last 10 years and what the staff anticipates will change in the next 25 years. Might we have a complete different standard 30 years from now? DeKalb responded, stating that there have been changes to the standards on mile sections in major roads. The standard that applies here is local streets. He does not expect the local street standards to change significantly in the future.

Dennis Bartels of Public Works offered that the majority of local streets are basically the 27’ wide street and have been in place for at least 25 years. He believes the local streets were similar even before that time.

Testimony in Support

1. Bob Benes, Aspen Builders, testified that he is both in support, but has concerns about the grading requirements. He is working on some acreage projects and in most scenarios it should work fine, but there are going to be those exceptions. As long as there is the opportunity to apply for exceptions, he does not see a problem. If a 3-acre lot is platted on a shadow plat for 3 one-acre lots and you have the build-through process in place, Benes is unclear whether it will be required that that homeowner build on a, b or c according to the shadow plat, or if the homeowner can purchase a 3-acre lot and put his lot where he wants. If the shadow plat goes through, it could be more expensive to put the improvements in.

2. Brian Carstens testified in support but agreed with the grading concerns. The proposal suggests that if you lay out 3-acre lots, you have to show three 1-acre buildable lots. If you do the cluster with the community system, you lay out 1-acre lots. If you have already taken it

down to the 1-acre lots to begin with, mathematically you should have more dwelling units on the entire parcel and he sees that causing more grading problems. He suggested striking the last sentence on page 148 in Section 27.65.075(b)(1):

...For acreage community unit plans using community wastewater systems with a one acre maximum lot size, the future final plot plan shall provide an average area per family equal to the lot area per family required in the R-3 Residential District, or a maximum gross density of 3.25 units per acre.

There was no testimony in opposition.

Staff questions

Carlson inquired of staff whether a waiver to the grading requirement can be requested and granted. DeKalb stated that an applicant could ask for waivers and modifications to the process. However, once the community unit plan and preliminary plat are in place, and the subdivider requests to replat, it is more difficult than today. This does have the ability to adjust but it is more difficult. The intent is that you pre-design to match your topography and if you need adjustments or amendments at that time, the waivers are still available.

DeKalb further explained that the intent is that a house not straddle lots. Larson asked whether you have to put your house on one of the pre-platted one-acre shadow lots if you buy a three-acre lot. And Bill-Strand inquired whether the septic and the well have to be on that lot. DeKalb stated that the septic and well will be on the same lot, but it won't be on the shadow plat because the shadow won't be activated until the city services get there. Carlson inquired whether the three shadow plats have to be the same size and same layout. DeKalb stated that they do not.

With regard to Mr. Carstens' proposed amendment, DeKalb explained that the intent is to try to match the urban densities. The 3.25 units per acre is a target. Today on the edge of town, the average subdivision under R-3 is running 3-4 units per acre. Another way of looking at it is that in an existing built city, you're getting six units on 2.1 acres. So you're not as dense as the existing city, but we would like density designed into the shadow plat about the same as in the typical detached residential lot in the city today. The lots could be modified to reflect the topography.

If a person bought one of the three-acre lots, Larson wondered whether a house could be built spread across two of the shadow lots. DeKalb stated that the regulations are designed to discourage that. An amendment and modification to the CUP can be requested and a revised plat can be done, but it is not designed to be done easily.

If a person built on one of the shadow lots and then the shadow plat was approved, Larson wondered whether someone else could buy the other three lots and build one house. DeKalb indicated that they could not straddle the lots. When the city services get there it should be set up to go directly to a final plat.

Bills-Strand is concerned whether this will work in the market. These acreage subdivisions are very large and expensive homes. If they want to buy a one-acre site and you can only put your house on 1/3 of that, that's not the house that is being built on these acreages today. If they put a \$180,000 - \$250,000 house on it, the price of the lot is going to be a very large percentage of the overall price. When you are only working with one-acre to begin with, and now take it down to R-3 density, those acreage subdivision houses are not going to fit on that 1/3 acre. That's not the market. That's not what's happening. DeKalb stated that his experience with the acreages is that there is all of the above – large lots, large houses, as well as smaller lots and average type houses. It would take some thought to come up with some revised language. DeKalb suggested that if the developer is going for that niche in the market, they would create larger lots and ask for modification and waivers to accommodate the development.

Marvin stated that we're building 100 acreage units per year county-wide. Those 100 units are in Tier I and Tier II and some in Tier III, and some are outside, but we could probably surmise that a higher percentage will want to be in the city. We're trying to capture the bulk that we're talking about. We are talking about a very small percentage of homes being in Tier III. DeKalb believes that one-half to two-thirds were occurring in the 3-mile area.

Sunderman inquired why everything goes back to the community wastewater system. It seems like we should encourage the community wastewater plan to begin with. DeKalb offered that the "3-acre" is kind of a magic number with the Health Department. We are retaining the option of having an either/or situation. What we envision is that the community system would be built to city standards. Sunderman indicated that he has problems with a three-acre lot going down to one-acre, but if we are going straight to the one-acre lots and you have a community system, why take it down further? DeKalb indicated that it goes back to the consultant study and how to convert acreages to a city lot size. It was determined that it is too far of a leap, so they broke it into thirds.

Carlson suggested that nothing says that you have to do that. It just says you should show how it could be done. When you are talking about community sewer, the one you are trying to target is the one lot line to lot line – cluster is much less an issue. DeKalb added that when the city picks up that sewer line we want to get some reasonable utilization as far as taps and so on. The developer can ask for modifications.

Bills-Strand wondered whether the R-3 could be changed to R-1 in the sentence that Brian Carstens suggested be stricken. She wants to protect the large homes. DeKalb indicated that amendment could be made by the Commission and staff would not object. If this amendment is made, however, the 3.25 units per acre should be adjusted accordingly.

CHANGE OF ZONE NO. 04044**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

September 15, 2004

Marvin moved approval, seconded by Carlson.

Bills-Strand moved to amend to change the language in Section 27.65.075(b)(1) on page 18, line 20, to R-1 (instead of R-3), to adjust the maximum gross density of 3.25 units per acre accordingly and to amend any other language throughout the ordinance necessary to accomplish this amendment, seconded by Carroll and carried 8-0: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Pearson absent.

Bills-Strand moved to amend Section 27.65.075(a)(2) on p.18, such that the grading for the future streets not be required for the current subdivision, but that the future streets be dedicated or easements granted, with the final rough grading not to be done in Tier II and III, but only required in Tier I, seconded by Sunderman.

Marvin stated that he will vote against this amendment. We are dealing with such a small number of lots in the overall scheme of things. The number of units that might be built in Tier III that is covered under the 3-mile limit could be 5-10 homes a year, and he does not see the value of providing a special exemption.

Carlson stated that he will also vote against the amendment. If there is a special topography, the developer can try to work around it. The grading avoids problems of tearing out trees, etc. in the future.

Bills-Strand noted that the Comprehensive Plan refers to balancing strong consumer demand for country style living, and she believes the owners should be able to put bushes and trees on the land knowing that there is an easement in place.

Motion to amend carried 5-3: Larson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Carroll, Marvin and Carlson voting 'no'; Pearson absent.

Main motion, as amended, carried 8-0: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Pearson absent. This is a recommendation to the City Council.

MISCELLANEOUS NO. 04008

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 15, 2004

Marvin moved approval, seconded by Carroll

Rick Peo of City Law Department suggested that there should be similar amendments to Title 26 to be consistent with the Commission's prior action on the amendments to Title 27.

Bills-Strand moved to amend to reflect the amendments made by the Commission to Title 27 in Change of Zone No. 04044, seconded by Sunderman.

Carlson believes that this is a big change from the original proposal.

Motion to amend carried 5-3: Larson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Carroll, Marvin and Carlson voting 'no'; Pearson absent.

Main motion, as amended, carried 8-0: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Pearson absent. This is a recommendation to the City Council.

MISCELLANEOUS NO. 04011

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 15, 2004

Carlson moved approval, seconded by Marvin and carried 8-0: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Pearson absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 04057

FROM AG AGRICULTURAL TO R-3 RESIDENTIAL

and

SPECIAL PERMIT NO. 04042,

LATTIMER'S ADDITION COMMUNITY UNIT PLAN,

ON PROPERTY GENERALLY LOCATED

AT SOUTH 84TH STREET AND KATHY LANE.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 15, 2004

Members present: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand; Pearson absent.

Staff recommendation: Conditional Approval.

Ex Parte Communications: None

The Clerk announced that Mark Hunzeker has requested a two-week deferral on behalf of the applicant.

Taylor moved deferral for two weeks, with continued public hearing and administrative action scheduled for September 29, 2004, seconded by Marvin and carried 8-0: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Pearson absent.

There was no testimony.

MISCELLANEOUS NO. 03012,
TO ADOPT A POLICY ON THE “PROGRAM FOR PAYMENT
OF ARTERIAL STREET IMPACT FEES TO PROMOTE
ECONOMIC DEVELOPMENT”

and

CHANGE OF ZONE NO. 04058
TO AMEND THE IMPACT FEE ORDINANCE
ADOPTING THE NEW POLICY.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 15, 2004

Members present: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand; Pearson absent.

Staff recommendation: Approval.

Ex Parte Communications: Bills-Strand announced that both Jon Carlson and Dan Marvin served on the committee that drafted the proposed policy.

Proponents

1. Michaela Hansen of Public Works presented the applications, reminding the Commission that the previous amendment heard by the Planning Commission has been totally rewritten. The impact fee ordinance provides that the City Council can waive the payment of impact fees on behalf of a business. The proposed policy establishes criteria to provide an objective, structured way to determine who is eligible based on a return of tax revenue to the city. It must be a business in Lincoln and derive 50% or more of its income from outside of Lancaster County; the business must have made payment of arterial street impact fees and must submit an application for reimbursement, which is a non-refundable \$300 fee; the median wage of new employees must be 110% or more of median wage for Lancaster County; and the completion of new construction and certificate of occupancy must be within 18 months of the issuance of the building permit. The amount the city would pay to the business is the lesser of the arterial street impact fee paid or two times the cash flow.

2. Dr. Rosenbaum, Professor of Economics at the University of Nebraska, who assisted the committee with the criteria and formula, explained that the committee attempted to calculate the tax revenues in terms of real estate taxes and city sales tax that the company would generate. The real estate taxes are from the development of the property and the sales tax is either from the product that is sold by that company or the new employees who receive the payroll and spend the money (cash in-flow). The cash out-flow is the incremental cost of having more people in the city. There are some economic assumptions that are made, and the committee attempted to make fairly conservative assumptions. He believes they came up with a user-friendly formula to determine eligibility for the rebate on the impact fee.

There was no testimony in opposition.

MISCELLANEOUS NO. 03012

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 20, 2004

Larson moved approval, seconded by Marvin.

Carlson noted that the Commission was briefed on these applications at a noon meeting two weeks ago. He believes the proposal answers every question that was raised previously, with a couple of extra benefits attempting to reward companies that pay good wages and bring new monies into the community.

Motion for approval carried 8-0: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Pearson absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 04058

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 20, 2004

Marvin moved approval, seconded by Krieser and carried 8-0: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Pearson absent. This is a recommendation to the City Council.

10-minute break

SPECIAL PERMIT NO. 1965,
HARTLAND HOMES NORTHWEST 1ST ADDITION
COMMUNITY UNIT PLAN

and

PRELIMINARY PLAT NO. 02007,
HARTLAND HOMES NORTHWEST 1ST ADDITION,
ON PROPERTY GENERALLY LOCATED
WEST OF N.W. 48TH STREET AND SOUTH OF WEST ADAMS STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 15, 2004

Members present: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand; Pearson absent.

Staff recommendation: Conditional Approval.

Ex Parte Communications: None.

Proponents

1. Brian Carstens appeared on behalf of **Hartland Homes**. This is a community unit plan on N.W. 48th Street immediately south of Adams Street, representing a remnant piece previously platted as lots and blocks with Madison and Cleveland Avenue going through. The western portion of Madison Avenue is being vacated.

Carstens withdrew the request to modify the cul-de-sac radius and to waive the street trees and sidewalks on the south side of W. Madison Avenue.

The only issue remaining is the waiver of the horizontal curves on N.W. 52nd Street, to which the staff is recommending denial. The developer's design was to have no through streets. They do not want to encourage people to drive 25 mph through those small stretches. There are continuous driveways shown along that area so the developer is seeking relief on the center line radius.

Carstens referred to the Arnold Heights Neighborhood Association concern about parking. Carstens pointed out that all units will have one- or two-stall garages with additional one or two stalls out front. The roadways are 27' in width and they are showing some off-street parking.

With regard to the drainageway, Carstens advised that Lyle Loth is working with Public Works and they believe they can get that resolved prior to hearing before the City Council.

Carstens agreed that it is probably true that we have not seen any multi-family units in the Airpark area, but the developer believes this to be an isolated area with the existing tree masses and will be a nice transition to the commercial uses on N.W. 48th Street.

Marvin inquired about the uses for Outlot C. Carstens advised that Outlot C is the drainage area. There is a detention cell and the drainage area will be smoothed out with a holding area constructed, so it will basically be open space.

The average depth of the lots is 95 feet. With the deck in the rear yard, Carstens indicated that there would be about 10 feet of the rear yard left. But there is a lot of the common open space behind it.

Bills-Strand inquired about additional parking, as she sees very little off-street parking for people who have birthday or graduation parties. Carstens believes they could incorporate some on the north side of Madison.

It was clarified that the only waiver requests now being sought are for the horizontal curves on N.W. 52nd (to which staff recommends denial) and to allow the unenclosed decks to encroach 10' into the rear yard (to which staff recommends approval).

There was no testimony in opposition.

Carlson inquired about any signalized intersection and whether it is anticipated that all of these units will come out N.W. 48th Street. Dennis Bartels of Public Works stated that Adams Street would be the potential signal location but these are so close to that intersection he does not anticipate that either one will be signaled. There is nothing across the street at Madison. There is some proposed commercial with Ashley Heights and that intersection lines up across both sides, so eventually the folks would have to go down N.W. 49th back to Huntington for the first potential signalized location, rather than N.W. 48th and Adams, which would be the intersection of two arterials.

Carlson asked when the improvements are scheduled for N.W. 48th. Bartels did not know. He believes it is in the CIP for design and it can remain a two-lane facility. It is the turning movements that cause a lot of the problem. On newer intersections we are trying to provide for left turn movement.

Carroll inquired why the staff recommends denial of the waiver of horizontal curves. Bartels stated that the waiver was not justified in the application, and the design standards require 25 mph design speed, so with the sharp curve and the driveways, you don't have the proper sight distance. 150 is the standard required curve and that is about a 25 mph design speed. Previous design standards had 125 centerline radius, which is about 17 mph design speed. In theory, there could be cars in the driveway with someone trying to back out at that intersection.

SPECIAL PERMIT NO. 1965**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

September 15, 2004

Larson moved to approve the staff recommendation of conditional approval, seconded by Krieser.

Carlson believes this is a great part of town to live in and the Neighborhood Roundtable hears a lot about their concerns about N.W. 48th. We are increasing turning motions and if we are wanting more houses built out there, they are justifiably concerned that their infrastructure is way underbuilt.

Marvin believes that density levels are considerably high, but he expects he'll probably vote against it and be in the minority. Bills-Strand pointed out that denial of the horizontal curve waiver will result in a decrease in the density because they will have to change the layout of the streets.

Motion for conditional approval, carried 6-2: Larson, Carroll, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Carlson and Marvin voting 'no'; Pearson absent. The Planning Commission did not grant the horizontal curve waiver. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 02007

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 15, 2004

Taylor moved to approve the staff recommendation of conditional approval, seconded by Krieser and carried 6-2: Larson, Carroll, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Carlson and Marvin voting 'no'; Pearson absent. The Planning Commission did not grant the horizontal curve waiver. This is a recommendation to the City Council.

WAIVER NO. 04010

FOR AN EXTENSION OF TIME TO INSTALL

SIDEWALKS AND STREET TREES,

ON PROPERTY GENERALLY LOCATED

AT INNOVATION DRIVE AND HIGHLAND BOULEVARD.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 20, 2004

Members present: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand; Pearson absent.

Staff recommendation: Approval, except for lots that have buildings and along W. Highlands Boulevard and N.W. 1st Street.

Ex Parte Communications: None

Tom Cajka of Planning staff submitted a letter from the applicants, the University of Nebraska Foundation and the University of Nebraska Technology Park, agreeing with the staff recommendation.

The applicant was not present.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 15, 2004

Marvin moved approval of the staff recommendation, seconded by Larson and carried 8-0: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Pearson absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 04042
TO AMEND TITLE 27 OF THE
LINCOLN MUNICIPAL CODE
TO ALLOW LARGER MESSAGE CENTER/ELECTRONIC
CHANGEABLE SIGNS IN THE H-3 HIGHWAY COMMERCIAL DISTRICT.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: September 15, 2004

Members present: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand; Pearson absent.

Staff recommendation: Denial.

Ex Parte Communications: Marvin reported that he attended a Neighborhood Roundtable meeting where this topic came up and there is a letter from Carol Brown on behalf of the Lincoln Neighborhood Alliance in opposition.

Proponents

1. Mike Morrow appeared on behalf of the applicant, **Anderson Ford**. Anderson Ford has pioneered the development of the Auto Mall on N. 27th and I-80 and several other dealers have now located out there. Anderson Ford was the first one to go in the area and in December of 2000, Anderson Ford filed an application with the Building & Safety Department for the sign that has been constructed. Morrow submitted a copy of the building permit application which includes a very specific drawing of the sign. Building & Safety issued the permit and Anderson Ford constructed the sign at their expense of \$80,000. At some point, someone orally contacted Anderson Ford and advised they might be in violation, but it was not until February of 2004 that an official letter came from Building & Safety advising Anderson Ford specifically that the sign violated the provisions of the ordinance because the size of the message changing board exceeded 80 sq. ft. Morrow agreed that the sign exceeds 80 sq. ft., being approximately 140 sq. ft. However, Morrow submitted that the size of the sign does not violate the ordinance; the fact that it is illuminated does not violate the ordinance; the location does not violate the ordinance; and no complaints have been received by anyone based on the sign changing board. If this sign did not have the message changing board, it would be in full complete compliance.

Morrow pointed out that this is a request that the zoning ordinance be amended in a very limited manner so that signs that are located in this zoning district, that are within 50' of the main building of the premises, and within 660 feet of the interstate, be allowed to have an increased size changing board. That is the only violation. The 80 sq. ft. size limit pertains to any sign in the city. This is a request to increase that limit to 240 sq. ft. only within the limited areas under the proposed amendment. The applicant does consent to the amendment as revised by the City Attorney. This amendment is extremely narrow. The sign has to be within 50 feet of the premises and 660 feet of the interstate.

Morrow believes this is an unfortunate situation. Anderson Ford has even offered to look at placing city messages on this sign. Amber Alert has suggested that this would be a great sign for the Amber Alert system and Anderson Ford has already signed up. Morrow believes the sign is technically in full conformance with all provisions with the exception of the changing board sign. There are no studies that show changing board signs are detrimental to the traveling public. The city uses changing boards all over this town right now – mobile changing signs, which are not in compliance.

There was no testimony in opposition.

Staff questions

Bills-Strand inquired about any other remedy, since the city also made a mistake. Would it be possible to allow the sign if it is used for the Amber Alert system and that it be allowed to remain in place until any changes are made to the sign? Rick Peo of the City Law Department stated that the sign is an illegal sign that was inappropriately approved by Building & Safety, but that doesn't give them a right to maintain or keep that sign. They do not have any vested rights to the sign. The city should revoke that permit that was erroneously issued. With regard to the issue as to whether the city is liable for any damages, the City Attorney would argue that the City is exempt under the tort claims act for this type of mistake, but those are legal disputes to be resolved at the court level. The sign cannot be accommodated by conditions. It is an illegal sign so it either needs to be made legal or it needs to come down or be modified to remove the message board display in excess of the limits.

Marvin inquired whether the sign can broadcast the time of day. Peo stated that it is the amount of square footage of the changing board that is the problem. The city does not monitor the message content anymore, but the 80 sq. ft. is the maximum that would be allowed. The issue is 240 sq. ft. versus 80 sq. ft.

Sunderman wondered whether they could use the existing sign but turn off part of it to bring it within the 80 sq. ft.. Peo assumes that if they modify the sign so that the message board is not in excess of 80 sq. ft., it would be permitted. Morrow stated that there have been discussions on modification but it depends on the capabilities of the sign. It becomes an enforcement issue.

Bills-Strand inquired whether the city would still be liable if changes are required to be made to make it a legal sign. Peo could not answer the question, but he believes there are some defenses that the city would have.

Larson stated that he has a lot of empathy for the applicant, first of all because of the error the city made, and secondly, because Anderson Ford is in the position of being on the high speed interstate. Any message they put up there has to be short and quick, so he thinks some sort of zoning change for situations like this might be appropriate.

Morrow pointed out that the city has established special sign districts, such as the Downtown movie theater project, which allows them to have changing movable signboards that are much larger than 80 sq. ft. This has also been done for Haymarket Park. Anderson Ford would be willing to look at doing a special sign district for this sign. This mall has brought in considerable sales tax dollars to this city. Signs change around the city all of the time. What about the changing sign at the gas stations? What about the billboards changing? The church at 48th & Cotner has the exact same kind of sign. There are some optional ways that this can be done. Building & Safety advised Anderson Ford to come forward with this request.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 15, 2004

Carlson moved to deny, seconded by Marvin.

Carlson is sympathetic to the owner because he thinks Building & Safety should have caught it and the applicant is probably going to have a legal remedy. The applicant does have an avenue to try to recover costs. It is tough to change the rule to accommodate someone who was allowed an exception to the rule by mistake. The rule is 80 sq. ft.

Taylor believes that we must also consider the nature of signage on the interstate. A very noble effort has been made to get rid of all the signs on the highways which are sight pollution. He can see that this sign is a sight pollution and he does not want to undo a great effort that was made in the past and he believes our highways should be as clean as possible.

Bills-Strand indicated that she is not in favor of the zoning change but she would like to see the possibility of a special sign district.

Motion to deny carried 7-1: Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Larson voting 'no'; Pearson absent. This is a recommendation to the City Council.

Bills-Strand asked how a special sign district works. Mike DeKalb of Planning staff advised that special sign district is in the code today—Haymarket, Haymarket Park and the Downtown Entertainment Center have special sign districts. The applicant must make application and then it goes through the Planning Commission and City Council.

CHANGE OF ZONE NO. 04049
FROM I-1 INDUSTRIAL TO R-5 RESIDENTIAL

and

SPECIAL PERMIT NO. 04040,
THE LEGENDS COMMUNITY UNIT 0 PLAN,
ON PROPERTY GENERALLY LOCATED
AT N. 25TH STREET AND FAIRFIELD STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: September 15, 2004

Members present: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand; Pearson absent.

Staff recommendation: Place on pending at the applicant's request.

Ex Parte Communications: None.

The Clerk announced that the applicant has requested that these applications be placed on the pending list for an indefinite time period.

Carlson moved to place on pending, seconded by Carroll and carried 8-0: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Pearson absent.

There was a question about whether the Commission should provide a date certain. Marvin Krout, the Director of Planning, stated that the applicant can request that an application be placed on pending for an indefinite time; however, the applicant will be required to pay an additional advertising cost when it is rescheduled. In this case, the Planning Department did accept the request without a specific date.

WAIVER NO. 04009
TO WAIVE THE MINIMUM LOT DEPTH
REQUIREMENT ON PROPERTY
LOCATED AT 3539 S. 40TH STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: September 15, 2004

Members present: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand; Pearson absent.

Staff recommendation: Approval.

Ex Parte Communications: Marvin Krout, the Director of Planning, disclosed that after the last meeting, he sent a note to the Commissioners, failing to recognize that it was a 4-4 vote and would come back up for hearing today. This was a communication about this particular case but it also tried to place it in a larger context. This is a request to subdivide the rear of this unit and it would allow for a potential duplex as well as a single family lot. The point he was trying to make is that there are three issues: general appearance of what might happen; concern

about on-street parking; and the issue of cars backing out onto Calvert. The appearance and the on-site parking issue versus on-street parking is going to be addressed to some extent by the proposed amendments to the Neighborhood Design Standards coming forward. In that proposal, there are some amendments, one of which will require the required parking for a duplex to be behind the front building line, and that is going to have an effect on design. There are going to be some new constraints and there is going to be more parking on the lot that is available on a driveway in the front yard as well as the two required spaces behind the front yard. Calvert Street has homes with fairly narrow frontages facing the street. In this case, you have a lot with 140' of frontage along Calvert which would have a single family or duplex unit with its driveway off of Calvert, with one or two driveways off Calvert. Down the street you might see 2-3 driveways in that same distance. It is not untypical of what you would see even if this area was developed in the typical pattern of single family lots on the street.

Commissioner Dan Marvin disclosed that he had a phone call from the applicant's attorney, as did Eugene Carroll.

Tom Cajka of Planning staff submitted a letter in opposition from the property owner at 3611 S. 40th, with concerns about traffic, parking on the street, and safety.

Proponents

1. Bill Olson, attorney for the applicant, clarified that the address on the agenda is incorrect. Instead of 3959 S. 40th, it should be 3539 South 40th. There is a contract to sell the west lot (Lot 2 of the proposed subdivision) and this is a request to waive the minimum lot depth. The proposed subdivision will create two lots, one with an existing single family home and the other will have a duplex built on it. Both lots will meet the R-4 zoning square footage requirements. The builder/purchaser has agreed, at least tentatively, to build according to the new design standards which are not yet in place.

With regard to parking under the new design standards, Olson is concerned with the new garage design standards. The proposal would have a double car garage for each of the two duplexes, fronting on Calvert and flush with the front of the building. The new design standards may cause this to be changed. With two double car garages, one for each duplex, there will be enough parking for two more cars in each driveway, which is a total of 8 cars off the street.

In regard to safety and accidents at this location, Olson pointed out that the hit and run accident in mid-August was while 40th and Sheridan was closed and traffic on Calvert was increased substantially because of that. He does not believe that eight off-street parking spaces is going to increase traffic sufficiently to increase real hazards. This objector previously told the applicant they had no objection. The objectors both live in R-2 zoning and the owner at 3611 S. 40th lives on a lot that is 214 x 169 feet, and the other is 329 x 305 feet, so they have a lot of buffer.

Olson also pointed out that the staff report which recommends approval points out the Comprehensive Plan provisions which encourage this kind of development of excess land in

residential zoning to increase density on a reasonable basis. The lot immediately to the west on 39th was subdivided in 1975, the west side was subdivided off and a duplex faces 39th Street. Around the corner on 39th, there are multi-family homes one-half block to the north. This is R-4 zoning. The zoning is appropriate for what this applicant is attempting to do.

There was no testimony in opposition

Staff questions

Carlson is concerned about how we bind someone to a design standard that is not passed yet. Cajka does not believe this can be done. If this waiver is approved and they come in with their building permit application, they have to meet the design standard that is in place today. However, with the design standard that is in place today, the garage door can only be 40% of the front facade. It will be difficult to have two double garage doors facing the street and maintain that 40%. Ed Zimmer clarified that the current standard is that the garage door can be no more than 40% and can serve no more than two stalls. So one cannot put two double garages on the front. The front door must also face the street under today's standards.

Cajka clarified that this action is only to approve or deny the waiver. The design standards will not be reviewed until a site plan is submitted at Building & Safety with the building permit.

Response by the Applicant

Olson added that the builder that builds a lot of homes in this city has worked with Ed Zimmer, and he has said he would work with the city to do whatever is necessary to get the duplex approved, whether it is current or new design standards. All we are trying to do today is get a waiver of the lot depth in order to subdivide the property. Then the builder can go forward and get a building permit.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 15, 2004

Carroll moved to place on pending until the new design standards are approved, seconded by Carlson.

Carroll is not opposed to the duplex, but the neighborhood needs to be protected. The new design standards will help provide that protection while still allowing the duplex. He has a problem with the design and the parking standards.

Larson asked when the design standards would be coming forward. Zimmer advised that they are scheduled to come before the Planning Commission on October 13th, and then they would go on to the City Council and might be adopted late October or early November.

Rick Peo of City Law Department expressed concern about an indefinite deferral, unless it is at the request of the applicant. If you do put it on pending, the waiver needs to come back and be run through simultaneously with the design standards.

Carroll amended his motion to place on pending for 90 days, seconded by Carlson. Motion failed 4-4: Larson, Carroll, Marvin and Carlson voting 'yes'; Krieser, Sunderman, Taylor and Bills-Strand voting 'no'; Pearson absent.

Larson moved approval, seconded by Taylor.

Bills-Strand stated that she would like to see the developer work with the design standards as they go forward and work with the neighborhood. She assumes that they want to get some work done before the snow flies. There is a duplex on the northeast corner of 40th and Calvert and another duplex in the area. She requested that the developer be very sensitive to the neighborhood design standards.

Marvin stated that he will vote against the waiver. When you look around and find areas where there have been problems, they are areas where we are adding a duplex and it becomes a sore spot within the neighborhood. We are giving this person a second bite at the apple. They were denied back in 1999. He doesn't see that anything has changed.

Carroll pointed out that the duplex to the west has a lot depth of 129'. There are a lot of duplexes in the area but the depths are 120' or more. This lot is 70 x 70. It is too small of an area for a duplex under today's design standards.

Motion for approval carried 5-3: Larson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Carroll, Marvin and Carlson voting 'no'; Pearson absent. This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

STREET VACATION NO. 04011

TO VACATE A PORTION OF P STREET

GENERALLY LOCATED AT THE

SOUTHWEST CORNER OF 8TH AND P STREETS.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: September 15, 2004

Members present: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand; Pearson absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

Ex Parte Communications: None.

Proponents

1. Dallas McGee, Urban Development Department, stated that the staff and B & J Partnership have done a lot of work in the last two weeks. This street vacation will help facilitate the redevelopment of four buildings at the corner of 8th & P. The original proposal would have required changing the angle parking that exists on 8th Street to parallel parking.

After hearing the concerns about that and the loss of parking, they began to meet with the applicant and Public Works. They were able to change some things to preserve the angle parking on P Street. The applicant agreed to reduce the area requesting to be vacated from 18' to a width of 15.5', or back to the edge of the dock. In meeting with Public Works, we discussed how to change the angle of the parking and save an additional area which would allow the angle parking to remain.

McGee then submitted additional materials in an attempt to answer some of the questions raised at the last meeting. As far as how to address the docks in the Haymarket, McGee stated that there are two different ways that redevelopment of these docks have been addressed, the first of which is vacation. The dock would be vacated and the property owner would be responsible for any improvements that would be needed on the dock itself. The second way is to keep the dock in public ownership. Under this scenario, the city would make any necessary improvements to the dock. Some of the docks along 8th Street have been vacated and some of them have been kept in public ownership.

Similarly, the request for vacation along P Street will accommodate a handicap ramp into the building. This can also be addressed in two ways: 1) vacation of the public right-of-way, or 2) obtaining a right-of-way use permit. In the event that outdoor dining is proposed, it can also be accomplished through the vacation of the right-of-way. If the property were to remain public right-of-way then an outdoor dining permit could be obtained.

McGee reiterated that the Urban Development Department continues to support the vacation request. It will help facilitate the redevelopment of four key buildings in Haymarket; it will require that the developer, rather than the city, pay for public improvements in the dock area. This dock has a vault underneath it and we try to stay away from cutting into docks that have vaults underneath them so any sidewalk would need to occur in front of the dock. The vacation would allow for the developer to move forward with a plan that would increase parking in the area. Combining the parking that the developer would put in the building with the additional parking accommodated on the street, there would be approximately 34 additional parking stalls as a result of this development – 20 in the building and 14 stalls on the street--mostly on P Street and some on 8th Street.

2. Kent Seacrest appeared on behalf of **B&J Partnership**. He suggested that this action refers to two activities: 1) how to do ADA and the entrance (P Street) and 2) how to preserve the docks on 8th Street. 8th Street and the docks are critical. One way is for the public to retain ownership and use TIF funds, and the developer gets a license. The other way is the vacation so that the developer can make permanent investments. The staff does not perceive a need for those spaces. We also have a situation where the sidewalk has dipped down so there is a major separation. If vacated, that sidewalk becomes the developer's liability. There may not be enough TIF funds if the street is not vacated. The vacation also increases parking by 34 stalls. The city won't have to worry about the vault space issue. We get a better product and our tenants know for certain that they can rely on the dock and the ADA for their entrance.

Seacrest advised that they have met with Jon Camp and will continue to dialog with him before this gets to Council. The Planning Commission jurisdiction on the street vacation is narrow; that is, as to whether the street vacation complies with the Comprehensive Plan. Seacrest submitted a list of 41 language references from the Comprehensive Plan that support this street vacation. He believes that this is very much in conformance with the Comprehensive Plan. They worked with the Historic Preservation Commission many times to get it right and finally got their support. The Historic Preservation Commission is in support of this street vacation, Planning is in support, Public Works has no objections and Urban Development is in support.

Marvin noted that there is very limited sidewalk space on 8th Street between P and Q Streets. He asked for a history on that in terms of when that happened because now the only way to get any space would be to widen the sidewalk out into the street and maybe lose parking there. Ed Zimmer of Planning staff advised that along that stretch from P to Q there had not been a sidewalk at the street level at all. There had been a rail spur along there. The sidewalk was created in conjunction with the dock work done about 4-5 years ago. It is part of the planning effort that Urban Development is conducting currently to improve sidewalk conditions on both sides of 8th Street. That narrow sidewalk was added when the access across the docks was no longer available. On the opposite side of the street there is an even narrower sidewalk along The Mill and no sidewalk at all currently in front of the other building.

With regard to the dock area, Carlson does not understand how the vacation will serve the public better than a permit. Seacrest explained that what you would call the cover dock as well as the north end of 8th Street is all one dock. It is just that the south end is covered and the north end is exposed. From an urban design point of view, it is a continuous dock. The city can revoke a license. The street vacation gives the tenants more confidence. No one is going to let us touch those docks. When it is privately owned, it is easier to invest the money and do a better job, and that is what is in the public's interest.

In terms of pedestrian motion, Carlson presumes that there is going to be a bigger pot of money available if the private person is involved in making those improvements. McGee suggested that the other point is whether we need that dock for public use, and if we did, we would need it for sidewalks for pedestrians. When we've looked at the docks, we have found that it is very expensive to try to put the sidewalks on the docks because there are vaults underneath them requiring a ramp, or we put the ramp in front of the vault which takes the same space that the sidewalk would take. Putting the public walks in the docks themselves is not financially feasible. It is much more feasible to put the walks in front of the docks. The tradeoff then is that we are able to make the sidewalk 6.5' wide and the angle parking would remain. There will be wider sidewalks between P and Q as well. The cost would be the same on P Street, whether or not it is vacated or there is a special use permit. In both cases, the city would need to move the curb so that there is a wider sidewalk and that curb would be moved out and would be an extension of the curb that lies in the block between 8th and 9th Streets. The unique thing about 8th Street is the dock, making it very difficult for the city to want to use the dock as a public sidewalk.

Seacrest added that the design is to use one ramp to serve three buildings. If you were to license that, it would make it more difficult to be sure the city would not take away an access someday. If you look up and down P Street, two-thirds of those buildings have used P Street right-of-way for entrance purposes, either stairs or ADA. There are TIF monies available to do the P Street relocation.

Marvin suggested that if the docks are retained by the city, the TIF dollars are used closer to the building. If vacated, we move the TIF dollars further out. Seacrest responded that if the docks are retained by the city, the public's TIF dollars will be used in the amount of \$100,000. If the street is vacated, that \$100,000 comes out of the developer's money and the TIF money is used to do something else that is in the public's interest.

Taylor asked how this relates to the renovation from Haymarket Park all the way to O Street. McGee stated that it is a public effort, an effort that began about 7 years ago when we began to look at a piecemeal approach to 8th Street. Now we are looking at all of the sidewalks on both sides of the street from O Street all the way to the pedestrian bridge. It is a public effort. Taylor wondered whether it is better coordination by vacating as opposed to the city doing the whole thing. What does the city plan to do? McGee stated that as part of the project, the city would be putting in the public walks down below the docks as TIF improvements. If we don't do the vacation, the city would be responsible for the dock.

Opposition

1. Jon Camp, property owner of the office building at 808 P Street, testified in opposition. He was the first developer in the Haymarket starting 22 years ago. He is appearing because of his concerns that the dynamics of the Haymarket are understood in terms of continued development. This is an excellent application; however, at this point, he still does not believe it meets the needs of Haymarket. He believes it probably should be denied. There are other ways that this project can proceed to meet ADA and the historic needs on the docks, and parking would be in a better condition.

The 8th Street project from O to Haymarket Park is a project that Urban Development is coordinating through the use of Clark Enersen, and it is ongoing and has not been decided. It puts us in a dilemma in that B&J needs to keep moving, yet what they are asking for today is not even defined in the 8th Street project and he believes it would be a mistake to do this vacation in isolation.

Camp pointed out that a lot of what we have in Haymarket is the balancing act of motorists, pedestrians and bicyclists. This proposal would impede both pedestrian and bicyclists in that it is going to narrow the streets. One of the proposals on the 8th Street design is to get rid of the parking. Public Works has agreed to 45 degree angle parking. The normal angle is 60 degrees. It does add some parking, but it also decreases the parking in front of the Grainger Building by making it 45 degree parking. We must be very protective of parking in the Haymarket.

Camp also pointed out that in order to vacate part of 8th Street, it pushes the curb line out 3-4 feet and will hurt the overall operation of Haymarket on a day-to-day basis. Long term, in the functional nature, it is going to have a detrimental effect on everyone in Haymarket and the tenants need to have that access.

With regard to the TIF money, if the street is vacated it will cause the sidewalk to be moved out four feet, and that is not cheap. There is about a 150' stretch on P Street that would have to be constructed. He maintains that there are increased costs that the city would bear through the vacation.

In addition, Camp does not believe that this is the time to narrow P Street. It would result in losing areas for snow mounding in the winter. We need to encourage a good perception of Haymarket, availability of parking and ease of operation.

Marvin asked Camp how to respond when the Planning Commission jurisdiction is only a finding as to conformance with the Comprehensive Plan. Camp believes it is also in conformance if the vacation is denied. The Comprehensive Plan is saying to facilitate and encourage historical redevelopment of Haymarket, revitalization and ADA needs. There are other ways to accomplish ADA here. Camp has never taken any public right-of-way for any of his buildings in the Haymarket to meet his needs. Narrowing P Street, narrowing 8th Street and changing the parking patterns is not good for the Haymarket.

Taylor asked whether Camp has any other alternative to suggest. We want to preserve the docks. Camp stated that he would put the sidewalk in front of the dock and do some parallel parking, but then come back and go to the current curb line for the remaining area. Parking does not decrease or change the width of the street. If you have parallel parking there is less physical space away from the parking line so you have a narrower street. Camp wants to preserve angle parking and he would like to see it preserved at the 60 degree angle which preserves even more spaces. The applicant is proposing to also move the curb out another four to five feet and then put in the angle parking at a lesser angle. Today, there is a revision suggesting 45 degree angle parking but still moving the curb out. The problem is that it also impacts down the street and he does not think we should change the curb line on 8th Street. Camp believes that everything that the property owner wants can be accomplished under a license. The issue before the Planning Commission is to vacate the public right-of-way, On that strict question, Camp is opposed because what they are proposing with that will negatively impact the functional use of the street and will cause extra costs.

Bills-Strand suggested that only 12.6 inches be vacated. Then with the sidewalks it would not cut into the street as much. Camp agreed that would be an alternative. He would like to see the curb line stay the same.

Camp also believes the issue with P Street is much the same. The city would have to build out and it narrows P Street. This will have adverse impact on delivery trucks, snow removal and other functional developments. You have to look at the dynamics. It is an unusual area.

Taylor expressed interest in seeing the developer work with Mr. Camp because he has done such a great job in the Haymarket.

Response by the Applicant

Seacrest stated that the applicant has tried to get more parking. They have added 14 on-street parking spaces. He also assured that the applicant has been working with the consultants on the 8th Street project and will continue to do so. With regard to the 45 degree versus 60 degree angle parking, the 60 degree parking loses one stall. When you go from 60 to 45 degree, the Grainger Building would lose one stall, but they are adding 14 net stalls. This is the city's recommendation to balance a multitude of interests. This same client owns eight properties in the Haymarket area. The bottom line is that this applicant/developer would not intentionally hurt the Haymarket area. They believe this will help the Haymarket area. If they did what Mr. Camp is suggesting, we would lose the trees along 8th Street because you can't keep the trees and get the sidewalk and keep the curb line in the same spot. We would lose the north part of the dock. If they did what Mr. Camp is suggesting, they would lose parking. Seacrest reiterated that the developer will continue to dialog with Mr. Camp between now and the City Council hearing. Seacrest believes the vacation conforms with the Comprehensive Plan. B&J is not interested in going for a license and have the city do this work – it would take them years. It is not possible to get tenants in there when you don't have ADA solved or when the dock is not solved. A partial vacation does not work because the developer and the city each own part of the dock. B&J has already lost two retailers because it has taken a year to get this far.

ADMINISTRATIVE ACTION BY THE PLANNING COMMISSION: September 15, 2004

Larson moved a finding of conformance, seconded by Krieser.

Larson believes that the rebuttal comments are correct. These are two very responsible property owners and they have both done a great deal to improve the Haymarket. He can understand why B&J does not want to rely on the city to do the improvements.

Carlson appreciates the applicant's help with the analysis. "It's a thinker" because it does sound like there are two ways to accomplish it, but there are pro's and con's to both. He wants there to be a clear demonstrated public gain when the city is divesting itself of publicly owned lands. He is sympathetic to Mr. Camp's discussions as well.

Carroll confirmed that the motion includes the reduced area.

Marvin believes they could reconfigure this a lot of different ways. He does not believe we need to move the sidewalk out as much on 8th Street. They wouldn't necessarily have to structure it in this way, but he will vote to support the motion.

Taylor does not understand the magic of private use as opposed to vacation, but he senses that if it is vacated that means the city has less control. He is inclined to support the vacation.

Rick Peo of City Law Department reminded the Commission that their responsibility is to determine if the vacation is in conformance with the Comprehensive Plan. Whether it is a good idea or bad idea does not mean it is or is not in conformance. It is not necessarily redevelopment of the Haymarket or ADA. The issue is the purpose of the street right-of-way in this area, and that is to provide proper circulation and traffic. The question is, does this street vacation maintain proper traffic circulation? If it creates a problem with pedestrian and traffic movement then maybe it is not in conformance. If the street is vacated, the city then would be selling it to the abutting property owner, and we can condition the sale. There would be a development agreement with the developer to demand he does the improvements, but that is a decision of the City Council. The city would not necessarily lose all rights or control over the dock area.

Bills-Strands wants there to be more work on this as it moves to the City Council.

Motion for a finding of conformance carried 8-0: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Pearson absent. This is a recommendation to the City Council.

OTHER ACTION

September 15, 2004

Bills-Strand made a motion to cancel the Commission's regular meeting scheduled for December 22, 2004, seconded by Marvin and carried 8-0: Larson, Carroll, Marvin, Carlson, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Pearson absent.

There will not be a noon briefing on September 29, 2004.

There being no further business, the meeting was adjourned at 4:35 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on September 29, 2004.